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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/603,343

06/25/2003

Joanne Mary Holmes

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11/28/2007

UNILEVER INTELLECTUAL PROPERTY GROUP

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EXAMINER

CHAWLA, JYOTI

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

11/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/603,343	<b>Applicant(s)</b> HOLMES ET AL.	
	<b>Examiner</b> Jyoti Chawla	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 September 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                           | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

### **DETAILED ACTION**

The Amendment filed September 12, 2007 has been entered. Claims 1 and 4-8 have been amended. Claims 1-9 remain pending and are examined in the present application.

#### ***Claim Objections***

Claim objections made in the office action dated May 22, 2007 have been withdrawn in light of applicant's amendments.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite for the recitation of when and how the tea leaves and the tea powder are wetted simultaneously. The term simultaneous is being interpreted as "existing at the same time" for the purposes of prior art comparison. Thus the claim is being interpreted as a method of making a tea product where tea leaves and tea solids are simultaneously wet at some point in the method and are dried together.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(1) Claims 1-4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carns et al (EP 0910956A1).

The references and rejection are incorporated herein and as cited in the office action mailed May 22, 2007

Regarding the amendments to claim 1, please see the rejection under 112 (second) as discussed in the office action above.

It is noted that the newly amended claims recite of "Mixing leaf tea and tea solids derived from tea powders to produce a mixture; and simultaneously wetting and drying the mixture to produce the fabricated leaf tea product". The claim as recited does not eliminate the possibility that the tea leaves and the tea powders are mixed after each one is wetted separately but simultaneously and then combined and then dried together or in some other order. The claim as recited does not clarify whether the mixture is a dry mixture or a wet mixture. Further it is also noted that the claim 1 as recited does not preclude soluble tea solids as taught by Carns. Thus mixing of tea leaves with soluble tea solids as taught by Carns, wherein the fabricated combined tea product comprises of tea leaves and tea solids as instantly claimed. Therefore Carns teaches that the tea leaves and the soluble tea solids are wet together and are dried together as recited the method recited in amended claim 1.

Alternatively, the soluble tea solids are mixed with the liquid (water) and the mixture is sprayed over the fluidized bed containing tea leaves. Thus the reference teaches a combined tea product comprising tea leaves and soluble tea solid, where the soluble tea solids *may be* dissolved in water prior to forming the combined tea product (Page 3, line 42). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention that various methods of combining tea leaves and soluble tea solids may be used. Thus to modify Carns and combine the two components in the dry

form and spray the dry mixture with water in order to make the combined tea product faster by eliminating the step of dissolving the tea solids would have been in the purview of one having ordinary skill in the art at the time of the invention. One would have been motivated to do so in order to economize on time, energy and equipment cost. Thus claim 1 as recited is obvious over Carns, absent any clear and convincing evidence and arguments to the contrary.

The amendment to claim 4, includes only the spelling correction, thus the rejection of claim 4 is maintained for reasons of record.

(2) Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carns et al (EP 0910956A1) in view of Menzi et al (US 6056949).

Carns has been applied to claims 1-4 and 9, as discussed above.

The references and rejection are incorporated herein and as cited in the office action mailed May 22, 2007.

### ***Response to Arguments***

Applicant's arguments submitted September 12, 2007 regarding 103(a) rejection of claims 1-4 and 9 over Carns and claims 5-8 over Carns in view of Menzi respectively (Remarks, pages 4-9) has been considered but have not been found persuasive and the rejections are maintained for reasons of record.

i) Regarding the argument that Carns does not teach the claimed invention, the applicant is referred to the rejections made in the office action dated May 22, 2007 and also the response to amendment above.

Claim 1 recites "tea solids derived from tea powders" The term used in the remarks, page 6, line 2 is "Tea powder" which is not the same as "tea solids derived from tea powder".

Regarding the term "simultaneously", simultaneous is defined as "existing or occurring at the same time". Carns reference does teach a mixture of tea leaves and soluble tea powder in a tea bag. The reference further teaches that the soluble tea solids are preferably coated on the tea leaves. The reference also teaches that coating of soluble tea solids on tea leaves may be accomplished by spraying a tea concentrate onto the tea leaves and drying the leaves; either simultaneously or in separate steps. Carns also teaches that the spraying can be done using a suitable coating apparatus, for example, by using a fluidized bed drier (Page 3, lines 40-45). Thus Carns reference does teach that the tea leaves and the soluble tea solids are wet together and are dried together. However the reference teaches that the coating *may be* accomplished by dissolving the soluble solids in water, thus indicating that other ways of combining were available at the time of the invention. If tea leaves are (L) soluble tea solids are (S) and water is (W), where the final product is (L+S+W) followed by drying, combining any two components prior to the addition of the third component in such a way that the drying is done after all three components have been mixed [i.e., {(L+S) +W} or {(S+W) +L} or {(L+W)+S}], would not impart patentable distinction to the claims. Therefore the invention as recited in claim 1, is obvious over Carns absent any clear and convincing evidence and arguments to the contrary.

ii) Applicant's argument that Carns or '956 reference is merely directed to a tea bag for ice tea beverages" (Remarks, page 6, lines 8-10) has not been found persuasive as the applicant has not claimed a tea product which is what Carns is teaching, regardless of the way the tea product of the prior art is packaged. Since the applicant has not claimed a packaging step, argument regarding the method of packaging the tea product as taught by Carns is moot (Remarks, page 8, line 14)

iii) Applicant's argument that the tea product of the Carns reference is a mixture of "30-95% by weight of tea leaves and with about 5% to about 70% by weight dried soluble tea solids" (Remarks, page 8). The argument is moot as the recited claims do not contain the limitation of relative proportion as taught by Carns.

iv) Regarding claims 5-8 as rejected over Carns in view of Menzi, applicant's arguments have been considered but have not been found persuasive and the rejections are maintained for reasons of record.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

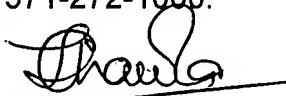
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Chawla whose telephone number is (571) 272-8212. The examiner can normally be reached on 8:00 am to 4:30 pm.

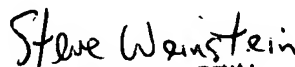
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number:  
10/603,343  
Art Unit: 1794

Page 7

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Jyoti Chawla  
Examiner  
Art Unit 1794

  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1794  
11/26/07